

May 17, 2024

Final Regulations Issued on U.S. Clean Vehicle Credit - Critical Minerals and Battery Component Requirements

The U.S. Inflation Reduction Act of 2022 (the “IRA”) amended and extended 26 U.S. Code § 30D to provide for a maximum tax credit of \$7,500 per qualifying new clean vehicle, consisting of a \$3,750 credit for vehicles meeting critical minerals requirements and another \$3,750 for vehicles meeting battery component requirements (the “30D Credit”).

On May 6, 2024, the U.S. Department of Treasury (the “Treasury”) and the Internal Revenue Service (the “IRS”) published the [final regulations](#) that determine qualification for the 30D Credit (the “Final Regulations”). The Final Regulations adopt most of the [proposed regulations](#) issued in April 2023 (the “Proposed Regulations”) with clarifying changes and additional modifications. See our [publication](#), dated April 5, 2023, for more details on the Proposed Regulations.¹

The Final Regulations are of significance to participants across the battery supply chains of U.S. electric vehicle (“EV”) manufacturers. Importantly, the Final Regulations:

- Adopt a more detailed process for manufacturers to trace the critical minerals in the battery supply chain than in the Proposed Regulations;
- Maintain the process set forth in the Proposed Regulations for battery component requirements;
- Maintain the restrictions set forth in the Proposed Regulations on the extraction, processing or recycling of applicable critical minerals and the manufacturing or assembly of battery components contained in a clean vehicle battery by a foreign entity of concern (“FEOC”) (the “FEOC Restriction”).

The Final Regulations become effective on July 5, 2024.

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CRITICAL MINERALS REQUIREMENT

To satisfy the critical minerals requirement, the applicable percentage (50% for 2024; 60% for 2025; 70% for 2026; and 80% thereafter) of the value of the critical minerals contained in an EV battery must be (i) extracted or processed in the United States or a country with which the United States has a free trade agreement or (ii) recycled in North America.² The Final Regulations replace the 50% value-added test included in the Proposed Regulations with a traced qualifying value test.³ The traced qualifying value test requires manufacturers to trace any value added in each procurement chain⁴ and measures the qualifying value of critical minerals from each procurement chain against the total value of the critical minerals. The result is a stricter test than that included in the Proposed Regulations, which provided full credit for any critical minerals so long as 50% of the value added in the applicable procurement chain met the requirements. To allow for a transition to the traced qualifying value test, qualified manufacturers providing a periodic written report prior to January 1, 2027 may continue to use the 50% value-added test included in the Proposed Regulations.

BATTERY COMPONENTS REQUIREMENT

To meet the battery components requirement, the applicable percentage (60% for 2024 and 2025; 70% for 2026; 80% for 2027; 90% for 2028; and 100% thereafter) of the value of the battery components of a clean vehicle must be manufactured or assembled in North America.⁵ The Final Regulations adopt the four-step process outlined in the Proposed Regulations without change.⁶

FEOC RESTRICTION

The Final Regulations maintain the FEOC Restriction set forth in the Proposed Regulations. The 30D Credit is not available if (i) the battery contains critical minerals extracted, processed, or recycled by a FEOC (for vehicles placed in service after December 31, 2024) or (ii) the vehicle's battery contains battery components manufactured or assembled by a FEOC (for vehicles placed in service after December 31, 2023).⁷ The Final Regulations describe how FEOC compliance is determined, including (i) the exclusion of "impracticable-to-trace battery materials" from FEOC due diligence and FEOC compliance determinations until 2027 and (ii) the maintenance of allocation-based accounting rules for applicable critical minerals contained in a battery cell.⁸ The Final Regulations also outline a reporting and review process for determining FEOC compliance.⁹ Starting this summer, the IRS, with analytical assistance from the U.S. Department of Energy (the "DOE"), will conduct an upfront review of attestations, certifications and documentation provided by qualified manufacturers addressing materials-sourcing requirements to ensure that qualified manufacturers are accurately representing their battery contents. Qualified manufacturers may rely on determinations provided by third-party manufacturers or suppliers, provided certain requirements are met.¹⁰

A FEOC is defined in the Infrastructure Investment and Jobs Act of 2021 as, among other criteria, a foreign entity that is "owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign

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country that is a covered nation”, which nations include the Democratic People’s Republic of North Korea, the People’s Republic of China, the Russian Federation, and the Islamic Republic of Iran, and is the subject of guidance promulgated by the DOE (see our [publication](#), dated December 8, 2023, for more details on the DOE’s proposed guidance). On May 6, 2024, the U.S. Department of Energy (the “DOE”) published the [final interpretive rule](#) on DOE’s interpretation of the statutory definition of FOEC, largely adopting its proposed guidance and clarifying the terms “government of a foreign country,” “foreign entity,” “subject to the jurisdiction,” and “owned by, controlled by, or subject to the direction.”

OTHER 30D CREDIT REQUIREMENTS

The following requirements are unchanged from the Proposed Regulations:

- **Limitation based on modified adjusted gross income (“AGI”).** The Final Regulations affirm that the 30D Credit is not available for consumers with modified AGI above certain thresholds (\$300,000 for married couples filing jointly, and \$150,000 for individuals or married couples filing separately) and that the modified AGI limitation does not apply to corporations and taxpayers other than individuals, estates, trusts, and partners or shareholders of passthrough entities.¹¹
- **Final assembly requirement.** Any vehicle must undergo its final assembly in North America to be eligible for the 30D Credit.¹² The Final Regulations affirm that “final assembly” means the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the vehicle’s mechanical operation included with the vehicle.¹³
- **Manufacturer’s suggested retail price (“MSRP”).** The 30D Credit is not available for a vehicle with an MSRP in excess of certain thresholds (\$80,000 for vans, sport utility vehicles and pickup trucks; \$55,000 for others).¹⁴ The Final Regulations affirm that MSRP means the sum of (i) the retail price of the automobile suggested by the manufacturer, and (ii) the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, as reported on the label affixed to the windshield or side window of the vehicle.¹⁵

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ENDNOTES

- 1 Final regulations are also provided for the used clean vehicle credit under 26 U.S. Code § 25E. These rules largely follow the 30D rules but are not separately discussed.
- 2 § 30D(e)(1)(B); § 1.30D-3(a).
- 3 § 1.30D-3(a)(3). Under the 50% value-added test in the Proposed Regulations, a critical mineral is a “qualifying critical mineral” if 50% or more of the value added to the critical mineral in the applicable procurement chain is derived from (i) extraction or processing that occurred in the U.S. or in a country with which the US has a free trade agreement or (ii) recycling that occurred in North America.
- 4 The “procurement chain” is the sequence of extraction, processing or recycling activities that occurs in a common set of locations with respect to an applicable critical mineral.
- 5 § 30D(e)(2)(B).
- 6 § 30D(e)(2)(B); § 1.30D-3(b).
- 7 § 30D(d)(7)(A).
- 8 § 30D-6(c)(ii). Under allocation-based accounting, the determination that a battery cell is a FEOC-compliant battery cell may be based on an allocation of the available mass, procured or contracted for, of applicable critical minerals and associated constituent materials to specific battery cells manufactured or assembled in a battery cell production facility, without the physical tracking of the mass of applicable critical minerals (and associated constituent materials) to specific battery cells.
- 9 § 1.30D-6(b) and (c).
- 10 § 1.30D-6(c)(5).
- 11 § 1.30D-4(b).
- 12 § 30D(d)(1)(G).
- 13 §1.30D-2(b)(23).
- 14 § 30D(f)(11).
- 15 § 1.30D-2(b)(29).

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